beneficiary in the intestate estate, and that accordingly the settlement as such was not strictly represented. This, however, has been remedied by an Order made in Originating Summons 57/35 whereby the third defendant was given leave to prosecute the appeal on behalf of the settled estate.

The only evidence filed on the application was an affidavit by Mr. Wotherspoon who is an official in the Estate & Trust Agencies, together with the exhibits to such affidavit and a file of agreed correspondence. There is no affidavit either by the sixth defendant, the person who completed the houses, or by the first defendant, the sole surviving trustee of the settlement. It is quite impossible therefore for the Court to say why and under what circumstances the sixth defendant diverted large sums of money from the estate of which he was executor for the benefit of the settled estate with which he was not concerned. There is no evidence that such payments were made at the request of the first defendant. The third defendant who principally benefits obviously could not have influenced the matter as he was then, and still is, a minor. In these circumstances the sixth defendant must be looked upon as a stranger to the settlement who was building on another person's land, not with any claim of right but knowing that it belonged to another. If that was the case there is no principle of equity which requires the person who has benefited to repay money which has been expended (see *Ramsden* v. *Dyson,* L.R. 1 Eng. and Ir. App., p. 129 at p. 141), and with all respect [6] to the learned trial Judge I fail to see [6] that the executor was justified in making the payment he did or that it was for the benefit of the estate as a whole. The only estate in which the executor was interested was the unsettled estate and it cannot have been to the benefit of the unsettled estate that part of it should be devoted to benefiting some one else's property. Although the third defendant is also a beneficiary in the unsettled estate yet as between the two estates he can only be regarded as a stranger.

I agree with the learned trial Judge that the cases of *Cooper* v. *Jarman,* L.R. 3 Eq. p. 99 and *Sprake* v. *Day,* [1898] 2 Ch. p. 510 do not cover the points raised in these proceedings. They only seem to show that if the sixth defendant had refused to complete the building the first defendant could not have compelled him to do so. The liability of the estate of Mohamed Yoosuf in respect of his contract with Tan Peck Hood is of course a different matter which does not now arise, and I also express no opinion as to whether the sixth defendant is personally liable to the intestate estate for the amount expended.

I would therefore allow the appeal and vary the order of Pritchard J. by omitting the finding that the cost of completing the shop houses should be paid out of the settled estate, and the orders for accounts in connection therewith.

Appeal allowed.

Solicitors: *Chan & Eber; Allen & Gledhill; Braddell Bros.; Mallal & Namazie; Sisson & Delay.*

Re KHOR BAK KEE

[C.A. (Burton Ag. C.J., Thomas C.J. (F.M.S.) and Howes J.) October 7, 1935]

[Penang Civil Appeal No. 2 of 1935]

Bankruptcy — Fraudulent conveyance — Ordinance No. 44 (Bankruptcy), ss.3(1)(b), 46.

Where a bankrupt conveyed to his wife his interest in a certain land for a small consideration on the day before he closed his business, and there was no record in his books of the transactions in question,

Held: that on the facts of the case there was a strong inference of fact that the wife had knowledge of the husband's impending bankruptcy and that the assignment of the property was a fraudulent conveyance within the meaning of section 3(1)(b) of Ordinance No. 44 (Bankruptcy).

On the 18th of November, 1933, the bankrupt abovenamed who was trading under the firm name of Chop Hup Joo at Bukit Mertajam assigned to his wife, Tan Ah Poon, his interest in a certain piece of land for a consideration stated to be $100. The day after the conveyance had been executed, the bankrupt closed his shop. He was adjudged bankrupt in Bankruptcy No. 22 of 1934 on the 9th March, 1934. Tan Ah Poon then sold the property to one Khor Neoh Kheh. The Official Assignee of the bankrupt's property applied to the Court in bankruptcy for orders setting aside the two conveyances to Tan Ah Poon and Khor Neoh Keh respectively as being fraudulent and void as against the applicant.

Whitley J. decided that the conveyance was fraudulent within section 3(1)(b) of the Bankruptcy Ordinance and on the 22nd day of March, 1935, made an order setting aside the conveyances. Against this order Khor Neoh Keh appealed and the appeal was heard before Mr. Justice William Burton, Acting Chief Justice, Sir Samuel Thomas, Chief Justice, Federated Malay States, and Mr. Justice Howes, and dismissed.

Somasundrum for the appellant.

Moor, Official Assignee, in person.

Cur. Adv. Vult.

Burton Ag. C.J.: Khor Bak Kee, who was trading under the style of Chop Heap Joo of Bukit Mertajam was adjudicated a bankrupt on 9th March, 1934. On 18th November, 1933, the bankrupt conveyed a one-seventh undivided interest in a piece of land to his wife, Tan Ah Poon for a stated consideration of $100. On 28th May, 1934, she conveyed the undivided share to Khor Neoh Keh for $240. Khor Bak Kee had bought it twenty years before for $420.

Whitley J. held that the conveyance to Tan Ah Poon was fraudulent and void as against the Official Assignee in Bankruptcy, that the conveyance from Tan Ah Poon to Khor Neoh Keh was also void as against the Official Assignee, and that the undivided share formed part of the assets of the bankrupt divisible amongst his creditors.

Against this judgment Khor Neoh Keh has appealed.

Whether or not the judgment of Whitley J. is correct depends in my opinion on the date of the act of

bankruptcy. If the date of any proved act of bankruptcy is twelve months before the receiving order and contemporaneous with or previous to this conveyance, then the title of the Official Assignee relates back to the date of that act of bankruptcy and the title of the purchaser, Khor Neoh Keh is defeated.

The case of the Official Assignee is that the conveyance to Tan Ah Poon was itself an act of bankruptcy, and in my view of the case the decision depends entirely on the consideration whether or not the conveyance to Tan Ah Poon was in fraud of the bankrupt's creditors. The good faith of Khor Neoh Keh has never been impugned. The onus of proof rests on Khor Neoh Keh to show that his title is good under section 52, (*ex parte Schulte* L.R. 9 Ch. 409 and *ex parte the Furness Finance Company,* 3 Mans. at p. 22) and consequently he must show that the conveyance to Tan Ah Poon was not fraudulent.

I do not myself think that it has been sufficiently
[7] shown that the consideration for the [7] conveyance to Tan Ah Poon was inadequate; the evidence on that point to my mind is inconclusive. But if we assume that the $100 actually passed from wife to husband as the consideration for the conveyance, the transaction is open to the gravest suspicion because the receipt of the $100 was never entered in the bankrupt's books. He closed his shop the day after the conveyance was made, and he admits that he had gone on trading long after his position was hopeless.

He is therefore anyhow in a dilemma. He realised that bankruptcy was imminent; and either made a colourable conveyance of the land to his wife, or else did not enter the receipt of the consideration money in his books. In either case there is a clear inference that he was intending to defraud his creditors and to save something from the wreck for himself. It is inconceivable that Tan Ah Poon did not know of her husband's financial position. It is not suggested that she did not. It is clear, I think, as P. O. Lawrence J. said in *In re Fasey* [1923] 2 Ch. at p. 9 that she:

"has accepted a conveyance of the property with the full knowledge that the sole reason which induced the vendor to convey it was to delay, hinder or defeat his creditors."

I think therefore that this appeal should be dismissed with costs, the deposit being paid out to the respondent unless the parties agree otherwise.

Thomas C.J. (F.M.S.): This is an appeal from an order of Whitley J., declaring that a conveyance dated the 18th of November, 1933, by Khor Bak Kee, a bankrupt, to his wife Tan Ah Poon was fraudulent and void as against the Official Assignee, and that a further conveyance dated the 28th of May, 1934, by Tan Ah Poon to Khor Neoh Keh was void as against the Official Assignee.

The first and third grounds of appeal have been withdrawn. There remain the following grounds:—

"(2) There was no evidence to hold that Tan Ah Poon had knowledge at the time of the conveyance that Khor Bak Kee was fraudulently disposing of his property for the purpose of delaying, hindering or defeating his creditors;

(4) the learned Judge should have held that even though the transaction amounted to an act of bankruptcy on the part of Khor Bak Kee the transaction was a protected transaction under section 52 of the Bankruptcy Ordinance";

and an added ground:—

"that the learned Judge having found that the appellant Khor Neoh Keh bought in good faith and paid valuable consideration should have applied the exception to the Statute of Elizabeth and/or the Law of Property Act, 1925 and held that the conveyance by Tan Ah Poon to the appellant is good and valid."

The land in question had been bought by the bankrupt some twenty years ago for $420. The conveyance to the wife was dated the 18th of November, 1933. The consideration was stated to be $100. There is no entry in the books of the bankrupt as to this sum being received. The bankrupt's reason for selling was that he had no money then. The wife's reason for the purpose was that the husband had no money for expenses. The wife must have known the condition of the business at the time of the conveyance. There was no intention by the bankrupt to continue his business, since, the very next day after the conveyance had been executed, he went to Chop Thong Joo, who had been pressing for the payment of their account, and informed them that he was unable to carry on his business. On the 21st of November, 1933, the bankrupt with the assistance of his wife returned to Chop Thong Joo such goods as had been received from them, and in addition handed over some 27 pigs valued at $150. Shortly after, the wife sold the land which had been conveyed to her by the bankrupt for the increased price of $230 or $240. This sum was paid by instalments, and a conveyance was executed in May, 1934.

The learned trial Judge has said in his grounds of judgment that he had no hesitation in holding that the conveyance to the wife was fraudulent as against the creditors.

In conveyances by bankrupts it is always necessary to consider the state of affairs at the time of the conveyance, the relationship of the respective parties, the sufficiency of the consideration, and in short all the surrounding circumstances. A conveyance by a bankrupt to his wife is always to be regarded with suspicion. The land had been purchased for $420 and was sold to her for $100 yet within a very short time she was able to find a purchaser at a price of $230 or $240. This would be an indication that the consideration was inadequate. She tells a rambling story as to how she had become possessed of the $100. There is no suggestion that it had been invested or that she was receiving any income in respect of it. She lived with her husband, and must have been aware of the state of the business. She knew that he had no money for expenses. There does not seem to have been any suggestion that she should lend her own money. Instead, there is a conveyance. There is no reference in the books to the transaction, no entry of the money received. The day following the conveyance, the bankrupt declared to one of his creditors that he was unable to carry on his business. Three days after the conveyance she was helping the bankrupt to return goods taken from his creditor.

In my opinion, all these matters indicated that the wife well knew all the circumstances, was aware of the financial position of her husband; and that she took the conveyance in order [8] to deprive the creditors of [8]

one of the chief assets of her husband. I am satisfied, therefore, that the learned trial Judge was right in his finding on the evidence that the conveyance to the wife was fraudulent as against the creditors.

In bankruptcy a particular significance has always been given to the word fraudulent. A conveyance which would not be fraudulent when the parties are solvent can be fraudulent in a bankruptcy, because the interests of other creditors have not been observed. The bankrupt having made a fraudulent conveyance, had committed an act of bankruptcy under section 3(1)(b) of the Bankruptcy Ordinance.

The bankrupt was adjudicated bankrupt on the 9th of March, 1934. By section 46 of the Bankruptcy Ordinance the bankruptcy is deemed to have relation back and to commence at the time of the first act of bankruptcy proved to have been committed within twelve months next preceding the date of the adjudication. Therefore the bankruptcy commenced on the 18th November, the date when the fraudulent conveyance was executed. The sale by the wife having taken place after that date, it will also be invalid unless protected by some provision of the law, since the wife, having no right owing to the bankruptcy, could give no title.

It has been argued that section 52 of the Bankruptcy Ordinance provides such a protection. That section provides that nothing shall invalidate any conveyance or assignment by a bankrupt for valuable consideration provided:

" that the date of payment.....takes place before the date of the receiving order and that the person by whom the payment.....was made at the time of the payment has not notice of any available act of bankruptcy committed by the bankrupt before that date."

That section only relates to a conveyance by the bankrupt himself. It is not extended to persons who derive their title from a person to whom the bankrupt has conveyed.

This question was dealt with in the case of *In re Carl Hirth, ex parte The Trustee* [1899] 1 Q.B. 612. Lindley M.R. in the course of his judgment said at page 622:—

" We have, therefore, to consider what is the position of a trustee who finds that there has been a fraudulent conveyance, which is an act of bankruptcy, and who elects to impeach the transaction and demands back the property from the person in whose possession it is. What is the answer to that. It appears to me that there is absolutely no answer at all except this: that there are certain provisions in the Bankruptcy Act which relate to what are called protected transactions; and of course if a transaction is protected by those provisions, then the trustee cannot enforce that claim. However, we need not trouble ourselves about them. The facts exclude the application of those sections. There is nothing, so far as I have gone yet, which points to any difficulty at all in the way of the trustee who claims this property upon the ground that the conveyance, which is an act of bankruptcy, was void under section 43 as from its date, when it was overreached by the petition and the adjudication."

And so in the present case, the facts exclude the application of the corresponding section. There was a fraudulent conveyance which was an act of bankruptcy, and to which the bankruptcy dated back. The conveyance by the bankrupt is consequently set aside. There has been no conveyance by the bankrupt to the person claiming the land. The wife had no title to convey to the claimant.

I turn now to the Statute of 13 Elizabeth Chapter 5 which, as part of the Common Law of England, is still in force in the Straits Settlements. Its provisions are of course not affected by the English Law of Property Act of 1925. Chapter 5 deals with fraudulent conveyances. Thereby, fraudulent conveyances with intent to delay hinder or defraud creditors are deemed to be 'clearly and utterly void, frustrate and of no effect.' There is a proviso by which the Statute does not extend :

" to any estate or interest in lands . . . . conveyed . . . . upon good consideration and *bona fide* lawfully conveyed.....to any person . . . . not having at the time of such conveyance . . . . any manner of notice . . . . of such fraud . . . .; anything mentioned to the contrary notwithstanding."

These old provisions, in my opinion, offer no greater protection than section 52 of the Bankruptcy Ordinance. The conveyance which comes within the intention of the Statute is the conveyance by the bankrupt to his wife. It is not a question of the conveyance of the wife to the claimant.

Under the Statute, the conveyance to the wife would be, in view of the findings of fact in the present case, clearly void. The conveyance to the claimant is in consequence also void, since the person conveying to him had no title. The appeal, therefore, fails and must be dismissed with costs.

Howes J.: I concur.

Appeal dismissed.

Solicitors: *Sundrum & Khoo.*

S.T. JAMES v. REX *

[A.Cr.J. (Burton Ag. C.J.) June 7, 1935]

[Singapore Magistrate's Appeal No. 11 of 1935]

Evidence of system — Evidence Ordinance, ss.14 and 15.

In a trial on a charge of extortion, evidence may be given of similar payments to accused on dates not specified in the charge, in order to shew the dishonest [9] intention, irrespective of any question of anticipating the defence. Such evidence may not be used to corroborate the fact of payment. [9]

MAGISTRATE'S APPEAL.

Appellant was convicted on 30th day of April, 1935 by the District Judge and First Magistrate, Singapore on two charges of extorting $2 from one Mutusamy on or about the 3rd November, 1934 and $10 from one Pertayan on or about the 26th September, 1934. There was a third charge in respect of one Sagoo on which appellant was acquitted. Appellant was an overseer in charge of a number of Municipal labourers and the three persons named in the charges were labourers employed in the appellant's district and under his immediate supervision. The witnesses Mutusamy, Sagoo and Pertayan gave evidence of making the payments specified in the charges under threats of being defaulted and through consequent fear of

* This decision was commented on in [1935] M.L.J. at p. lxxxii.